

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVE VAN ELZEN and AUBREY  
MOORE, individually and on behalf of all  
other similarly situated,

Plaintiffs,

TREND CAPITAL HOLDINGS, INC., a  
Delaware Corporation

NO. 3:16-CV-05759

## COMPLAINT – CLASS ACTION

FOR DAMAGES PURSUANT TO 47 U.S.C. §227. et seq. (TELEPHONE CONSUMER PROTECTION ACT), RCW 80.36.400 (AUTOMATIC DIALING AND ANNOUNCING STATUTE), RCW 19.86 (CONSUMER PROTECTION ACT), AND RCW 80.36.390 (TELEPHONE SOLICITATION)

## JURY DEMAND

Plaintiffs Dave Van Elzen (“Van Elzen”) and Aubrey Moore (“Moore”) (collectively “Plaintiffs”), by their undersigned attorneys, for this class action complaint against Defendant Trend Capital Holdings Inc. (“Trend Capital”), allege as follows on their own personal knowledge and on investigation conducted by their attorneys and, in support, state and allege as follows:

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## **L. NATURE OF THE ACTION**

1. Plaintiffs, individually and as a class representative for all similarly situated persons in the United States who have received automated text message calls to their cellular phones from an automatic telephone dialing system by Defendant or its agents, brings this action for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), the Washington Automatic Dialing and Announcing Device Statute (“WADAD”), the Washington Consumer Protection Act (“CPA”), specifically RCW 80.36.390 (telephone solicitations), and for invasion of privacy by intrusion against Trend Capital and its present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, and/or related entities.

## II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiffs' TCPA claim pursuant to 28 U.S.C. § 1331 because Plaintiffs' TCPA claim arises under the laws of the United States, specifically 47 U.S.C. § 227 *et seq.* and its implementing regulations, 47 C.F.R. § 64.1200 *et seq.*

3. This Court has personal jurisdiction over Trend Capital and venue is proper in this District because Defendant systematically and continuously conducts business in Washington State, maintains its principal place of business in Washington State, and a substantial part of the events giving rise to the claims asserted here occurred in this District.

### III. PARTIES

4. Plaintiff Van Elzen is a natural person and is domiciled in, and is a citizen of, the State of Wisconsin.

5. Plaintiff Moore is a natural person and is domiciled in, and is a citizen of, the State of Minnesota.

6. Defendant Trend Capital is a corporation incorporated and existing under the

1 laws of the State of Delaware whose primary corporate headquarters is located at 13115 NE  
 2 4th Street, Suite 110, Vancouver, Washington 98684. Trend Capital does business  
 3 throughout the United States, including in the State of Washington and this District.

4 **IV. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991  
 (TCPA), 47 U.S.C. § 227**

5 7. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C.  
 6 § 227 (“TCPA”), in response to a growing number of consumer complaints regarding certain  
 7 annoying and harassing telemarketing practices.

8 8. The TCPA regulates, among other things, the use of automated telephone  
 9 equipment, or “autodialers.” Specifically, the plain language of Section 227(b)(1)(A)(iii)  
 10 prohibits the use of autodialers to make any call to a wireless number in the absence of an  
 11 emergency or the prior express consent of the called party.

12 9. According to findings by the Federal Communications Commission (“FCC”),  
 13 the agency Congress vested with the authority to issue regulations implementing the TCPA,  
 14 such calls are prohibited because, as Congress found, automated or prerecorded telephone  
 15 calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls  
 16 can be costly and inconvenient. The FCC also recognized that many wireless customers are  
 17 charged for incoming calls whether they pay in advance or after the minutes are used.

18 10. The WADAD is based on the federal TCPA statute, and the federal analysis of  
 19 TCPA provides guidance for interpreting WADAD.

20 **V. FACTUAL ALLEGATIONS**

21 **A. Bulk SMS Marketing**

22 11. In recent years, marketers who have felt stymied by federal laws limiting  
 23 solicitation by telephone, fax machine, and e-mail have increasingly looked to alternative  
 24 technologies through which to send bulk messages cheaply.

25 12. Bulk text messaging, or SMS marketing, has emerged as a new and direct

1 method of communicating and soliciting consumer business. The term “Short Message  
 2 Service,” or “SMS,” is a messaging system that allows cellular telephone subscribers to use  
 3 their cellular telephones to send and receive short text messages, usually limited to 160  
 4 characters. An SMS message is a text message call directed to a wireless device through the  
 5 use of the telephone number assigned to the device.

6 13. When an SMS message call is successfully made, the recipient’s cell phone  
 7 rings, alerting him or her that a call is being received. As cellular telephones are inherently  
 8 mobile and are frequently carried on their owner’s person, calls to cellular telephones,  
 9 including SMS messages, may be received by the called party virtually anywhere worldwide  
 10 and instantaneously.

11 **B. Defendant Transmits Text Messages to Consumers Who Do Not Want**  
 12 **Them**

13 14. Trend Capital is a list management and lead generation company, operating in  
 14 a variety of markets, including payday lending.

15 15. Trend Capital offers several different products for affiliate marketing,  
 16 including lead generation, pay-per-click advertising, and a text-messaging platform.

16 16. Trend Capital’s text messaging platform is known as “Vatimo” and is  
 17 described by Defendant as having a “vast scale of messaging capability, high deliverability,  
 18 and detailed reporting.”<sup>1</sup>

17 17. Trend Capital directly, or at the direction of its clients, sends text messages to  
 18 consumer’s cellular phones.

18 18. In sending these text messages, Defendant took no steps to acquire the oral or  
 19 written prior express consent of Plaintiffs or other cellphone users who received the  
 20 unsolicited text messages.

25 \_\_\_\_\_  
 26 <sup>1</sup> <http://trendcapital.com/projects>

1       19.    Defendant made, or had made on its behalf, the same (or substantially the  
 2 same) text message calls *en masse* to thousands of cellular telephone numbers throughout the  
 3 United States.

4       20.    In sending the text messages at issue in this Complaint, Defendant utilized an  
 5 automatic telephone dialing system. Specifically, the hardware and software used by  
 6 Defendant (or its agent(s)) has the capacity to store, produce, and dial random or sequential  
 7 numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en*  
 8 *masse*, in an automated fashion without human intervention. Defendant's automated dialing  
 9 equipment includes features substantially similar to a predictive dialer inasmuch as it is  
 10 capable of making numerous text message calls simultaneously (all without human  
 11 intervention).

12       21.    Defendant was and is aware that these above described text messages were  
 13 and are being made without the prior express consent of the text message recipients.

14       C.    **Defendant Transmits Text Messages to Consumers Who Have Expressly**  
 15       **Opted-Out**

16       22.    Defendant also sends unauthorized SMS text messages to cellular subscribers  
 17 who have expressly “opted-out” or requested not to receive text messages. Even if any prior  
 18 consent existed, Defendant is required to honor each stop-request as a termination of any  
 19 prior consent. Accordingly, any SMS text message (other than a final one-time confirmation  
 20 text message confirming the recipient’s desire to not receive such messages) sent to a cellular  
 21 subscriber after receiving an express stop request is done without prior express consent.

22       23.    To help mobile marketers navigate regulatory compliance, the Mobile  
 23 Marketing Association (“MMA”) publishes specific guidelines based on accepted industry  
 24 practices for all mobile marketers. Those guidelines include industry best practices for  
 25 processing and honoring stop requests from consumers.

26       24.    According to the MMA’s October 2012 U.S. Consumer Best Practices for

1 Messaging, “[a] subscriber must be able to stop participating and receiving messages from  
 2 any program by sending STOP to the short code used for that program. . . END, CANCEL,  
 3 UNSUBSCRIBE or QUIT should also be opt-out key words for all programs; however  
 4 content providers should feature the word STOP in their advertising and messaging. . . When  
 5 sent, these words cancel the subscriber’s previous opt-in for messaging.” Further, “[t]he  
 6 content provider must record and store all opt-out transactions.”

7 25. CTIA<sup>2</sup> similarly advises that “[s]hortcode programs must respond to, at a  
 8 minimum, the universal keywords STOP, END, CANCEL, UNSUBSCRIBE, and QUIT . . .  
 9 and, if the user is subscribed, by opting the user out of the program.” Further, “[r]ecurring  
 10 programs must promote opt-out instructions at regular intervals in content or service  
 11 messages, at least once per month,” and “[u]sers must be able to opt out at any time.” *See*  
 12 CTIA Compliance Assurance Solution Mobile Commerce Compliance Handbook, Version  
 13 1.2, effective August 1, 2013.

14 26. The FCC has similarly ruled that consumers have the ability to revoke their  
 15 consent. Yet Defendant ignores these rules and accepted industry guidelines. Instead,  
 16 Defendant makes it difficult for consumers to opt-out or unsubscribe to its SMS text  
 17 messages by failing to timely honor such requests.

18 27. Despite receiving numerous express stop requests from cellular subscribers,  
 19 including Plaintiff Moore, Defendant Trend Capital continues to send automated text  
 20 messages to these subscribers, sometimes for months afterwards.

21 28. Defendant knows, or is reckless in not knowing, that its SMS text messages to  
 22 these cellular subscribers are unauthorized. Reply message STOP requests are, by design,  
 23  
 24

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25 <sup>2</sup> The CTIA is an international non-profit organization that audits and enforces the rules surrounding carrier-  
 26 based text messaging programs. Together, the MMA and the CTIA establish and publish guidelines setting forth  
 accepted industry best practices for mobile marketing.

1 sent to Defendant's number, thereby directly informing Defendant that any subsequent  
 2 messages are unauthorized. Ultimately, consumers are forced to bear the costs of receiving  
 3 these unsolicited and unauthorized text messages.

4 **D. Websites Owned and Controlled by Defendant Trend Capital Holdings**

5 29. On information and belief, Defendant Trend Capital Holdings sends or has  
 6 sent on its behalf through its affiliates, unsolicited text messages to consumers directing such  
 7 consumers to complete payday loan applications on websites Defendant or its affiliates own  
 8 or control such as Loanup1.com, Dev-Yosto.com, and IncLoans.com.

9 30. IncLoans.com is privately registered to hide the owner's identity presumably  
 10 since the website is used to engage in unsolicited telemarketing that violates the Telephone  
 11 Consumer Protection Act.

12 31. Dev-Yosto.com is an identical website to IncLoans.com, with the exact same  
 13 homepage, images, links, including all of the exact same text on each page, and the ability to  
 14 submit a payday loan 'application' through both websites.

15 32. On information and belief, Dev-Yosto.com stands for development site for the  
 16 Yosto company. The whois registration for Dev-Yosto.com reveals that the website is  
 17 registered to Denis Goncharov whose email is denis@yosto.com.

18 33. Yosto was located in Vancouver, WA and engaged in affiliate marketing  
 19 within the payday loan industry.<sup>3</sup>

20 34. Yosto has since been dissolved according to its corporate records in Delaware.  
 21 Many of the principals of Yosto reformed to create Trend Capital Holdings, Inc. For instance,  
 22 Vlad Nester, the former CEO of Yosto, is now the CEO of Trend Capital Holdings, Inc.<sup>4</sup>

23  
 24  
 25 <sup>3</sup> See <https://www.facebook.com/Yostocom> ("Many of our affiliates in payday US noticed that it's became [sic]  
 harder to generate Payday US traffic within the last two weeks. Is there something wrong?")

26 <sup>4</sup> <https://www.linkedin.com/in/vlad-nester-4b284867>

1       35. Trend Capital was formed in August 17, 2015 in Vancouver, Washington and  
 2 is responsible for the loans-soliciting website Incloans.com. Trend Capital markets itself as a  
 3 “leader in list management and lead generation. We offer high-conversion landing pages and  
 4 generate a large volume of traffic. Our revolutionary platform allows us to run effective  
 5 profitable campaigns.”<sup>5</sup> One of the platforms that Trend Capital runs is Vatimo, which it  
 6 describes as “a unique and reliable SMS messaging and call tracking platform...it’s vast  
 7 scale of messaging capability, high deliverability, and detailed reporting makes Vatimo an  
 8 effective and highly utilized platform.”<sup>6</sup>

9       36. Loanup1.com, which is a site also promoted by or on behalf of Defendant  
 10 Trend Capital, is also owned or controlled by Defendant Trend Capital.

11       37. Loanup.com was a site marketed by Yosto, the precursor company to  
 12 Defendant Trend Capital. Yosto claimed, when promoting to affiliates who will drive traffic  
 13 to its site, that “You can send traffic to the exclusive landing pages available through our  
 14 network. The conversion rate on our promo sites can reach up to 60%.”<sup>7</sup> The posting goes on  
 15 to describe loanup.com and includes an image of the site, which is a replica of the site of  
 16 Loanup1.com.

17       38. Yosto last updated its affiliate offer promoting Loanup.com as recently as  
 18 August 1, 2016 according to Odigger.com, a website forum that helps companies advertise  
 19 and find affiliate offers. Yosto offered \$185 for each affiliate that sent a lead through  
 20 Loanup.com.

21  
 22  
 23       <sup>5</sup> <https://www.linkedin.com/company/trend-capital-holdings-inc>

24       <sup>6</sup> <http://trendcapital.com/projects>

25       <sup>7</sup> <http://www.warriorforum.com/affiliate-program-database/858716-yost-advanced-affiliate-network-up-155-per-lead-weekly-payments.html>

1       39.     The site Loanup.com, as of March 15, 2015,<sup>8</sup> and the current Loanup1.com  
 2 website are mirror websites of one another sharing the same design and text.

3       40.     Unfortunately for Plaintiffs and other members of the Classes, Defendant send  
 4 out text messages to consumers who have not consented to receive them.

5       41.     By making the text message calls at issue in this Complaint, Defendant caused  
 6 Plaintiffs and the members of the Classes actual harm and cognizable legal injury. This  
 7 includes the aggravation and nuisance and invasions of privacy that result from the receipt of  
 8 such text messages, in addition to a loss of value realized for the monies consumers paid to  
 9 their wireless carriers for the receipt of such calls. Furthermore, the calls interfered with  
 10 Plaintiffs' and the other Class members' use and enjoyment of their cellphones, including the  
 11 related data, software, and hardware components. Defendant also caused substantial injury to  
 12 their phones by causing wear and tear on their property, consuming battery life, and  
 13 appropriating cellular minutes.

14       **E.     Plaintiff Van Elzen's Experience with Defendant**

15       42.     On June 10, 2011, Plaintiff Van Elzen registered his cellular phone number on  
 16 the National Do Not Call registry, a list that all telemarketers must adhere to, to avoid  
 17 unsolicited calls and text messages. Beginning in May 2016, Plaintiff Van Elzen began to  
 18 receive unsolicited text messages on his cell phone from a variety of phone numbers. The  
 19 telemarketer was texting him in order to solicit Plaintiff Van Elzen to apply for a so-called  
 20 payday loan.

21       43.     Plaintiff Van Elzen received the first text message from Defendant on May  
 22 23, 2016 from 304-370-6092 and the link in the text message lead Plaintiff to  
 23 <http://incloans.com>.

24  
 25  
 26       

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<sup>8</sup> <http://web.archive.org/web/20150315012440/https://loanup.com/>

1       44. Plaintiff Van Elzen received a second text message from Defendant on June 1,  
 2 2016 stating, "Due to changes we approve you now for sure and full advance  
 3 <http://bit.ly/1WuSNqX>." A hyperlink in that text message also lead Plaintiff to  
 4 <http://incloans.com>.

5       45. Plaintiff Van Elzen received a third text message from Defendant on June 2,  
 6 2016 stating, "Morning Excited you can be finalized for advance last step right away  
 7 go <http://loos.net/w416> /Text stop to 2133547369." The hyperlink in that text message also  
 8 lead to <http://incloans.com>.

9       46. Plaintiff Van Elzen received a fourth text message from Defendant on June  
 10 20, 2016 stating, "Latest News Excited you can be ap proved for advance last step now  
 11 go <http://lsoo.net/w2119> /Text stop to 2133547369." The hyperlink in that text message also  
 12 lead to <http://incloans.com>.

13       47. Plaintiff Van Elzen received a fifth text message from Defendant on June 24,  
 14 2016 stating, "We approve you now for sure advance <http://bit.ly/293R4Uy>." The hyperlink  
 15 in that text message also lead to <http://incloans.com>.

16       48. At no time did Plaintiff Van Elzen consent to the receipt of text message calls  
 17 from Defendant, let alone provide prior oral or written express consent to Defendant.

18       49. Plaintiff Van Elzen received unsolicited telemarketing text messages on  
 19 behalf of Trend Capital Holdings, Inc. and its affiliates for 2 months.

20       50. Plaintiff Van Elzen received a total of 5 unsolicited text messages from  
 21 Defendant, each of which attempted to telemarket a payday loan.

22       51. By making unauthorized text message calls as alleged herein, Defendant has  
 23 caused consumers actual harm, including aggravation and annoyance and interference with  
 24 the use and enjoyment of their cellphones. In the present case, a consumer could be subjected  
 25 to many unsolicited text messages as the Defendant does not provide instructions or a  
 26

1 mechanism for opting out.

2 52. Unfortunately for Plaintiffs and other members of the Classes, Defendant send  
3 out text messages to consumers who have not consented to receive them.

4 53. To redress these concrete and particularized harms, Plaintiff Van Elzen, on  
5 behalf of himself and a class of similarly situated individuals, bring suit under the Telephone  
6 Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“47 U.S.C. § 227”), which prohibits  
7 unsolicited voice and text calls to cell phones.

8 54. On behalf of the Classes, Plaintiff Van Elzen seeks an injunction requiring  
9 Defendant to cease all wireless spam activities and an award of statutory damages to the class  
10 members, together with costs and reasonable attorneys’ fees.

11 **F. Plaintiff Moore’s Experience with Defendant**

12 55. On November 6, 2012 Plaintiff Moore registered her cellular phone number  
13 on the National Do Not Call registry to avoid unsolicited calls from telemarketers. Beginning  
14 in approximately January 2016, Plaintiff Moore began to receive unsolicited text messages  
15 on her cell phone from a variety of phone numbers. The telemarketer was texting her in order  
16 to solicit Plaintiff Moore to apply for a so-called payday loan.

17 56. Plaintiff Moore received the first text message on her new phone from  
18 Defendant on May 2, 2016 at 12:57 PM stating, “You are now eligible to request more funds  
19 – up to 1K. Login at <http://bit.ly/1rr6bza>. Reply STOP to Quit.” The text was sent by 302-  
20 549-4377 and the link in the text message leads to <http://incloans.com> when it is clicked.  
21 Plaintiff Moore replied “STOP” to put an end to the text messages, but she received no  
22 confirmation of her opt-out.

23 57. Despite her opt-out request, Plaintiff Moore received a second text message  
24 on her new phone from Defendant on May 16, 2016 at 1:18 PM stating, “More funds  
25 available. Login <http://bit.ly/1WAaQw5> to request. Txt CANCEL to QUIT.” The text was  
26

1 sent by 423-617-0377 and the link in the text message leads to <http://incloans.com> when it is  
 2 clicked.

3       58. Plaintiff Moore received a third text message on her new phone from  
 4 Defendant on May 23, 2016 at 11:27 AM stating, “Your account is active. You may login  
 5 and apply for funds <http://bit.ly/27PnoDb> Txt CANCEL to STOP.” The text was sent by 423-  
 6 617-0729 and the link in the text message leads to <http://touchpointloans.com>. Plaintiff  
 7 Moore replied “Cancel” in an effort to opt-out of the text messages.

8       59. Despite her second opt-out request, Plaintiff Moore received a fourth text  
 9 message on her phone from Defendant on May 31, 2016 at 12:34 PM stating, “You are  
 10 eligible to apply for funds by completing a quick and simple form online. Submit your  
 11 request today <http://bit.ly/1WWhmwL>. Reply CANCEL to CANCEL.” The text was sent by  
 12 530-447-0451 and the link in the text message leads to <http://touchpointloans.com> when  
 13 clicked.

14       60. Plaintiff Moore received a fifth text message on her new phone from  
 15 Defendant on July 18, 2016 at 12:08 PM stating, “Submit an application for additional funds.  
 16 The form is located in your account at <http://loanpct.co/4a4ee>. Reply STOP to CANCEL.”  
 17 The text was sent from phone number 844-238-7071 and the link in the text message leads to  
 18 <https://loanspockets.com/> when clicked. Plaintiff Moore replied Stop to cancel as instructed.  
 19 This time she received an opt-out confirmation.

20       61. Loanspockets.com is a replica of the site Loanup1.com controlled by  
 21 Defendant Trend Capital Holdings.

22       62. Yosto advertised leads to LoanPocket.com via the affiliate network on  
 23 Odigger.com.<sup>9</sup>

24  
 25 \_\_\_\_\_  
 26 <sup>9</sup> <http://odigger.com/affiliate-offer/loanpocket-com-payday-loans-usa/>

63. Touchpointloans.com is a replica of Loanup1.com

64. At no time did Plaintiff Moore give prior express consent to the receipt of text message calls from Defendant, let alone provide prior oral or written express consent to Defendant.

65. Plaintiff Moore received unsolicited telemarketing text messages on behalf of Trend Capital Holdings, Inc. and its affiliates for 6 months.

66. Plaintiff Moore received a total of at least 5 unsolicited text messages, all relating to obtaining a payday loan.

67. By making unauthorized text message calls as alleged herein, Defendant has caused consumers actual harm. In the present case, a consumer could be subjected to many unsolicited text messages and interference with the use and enjoyment of their cellphones.

68. To redress these injuries, Plaintiff Moore, on behalf of herself and a class of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“47 U.S.C. § 227”), which prohibits unsolicited voice and text calls to cell phones.

69. On behalf of the Classes, Plaintiff Moore seeks an injunction requiring Defendant to cease all wireless spam activities and an award of statutory damages to the class members, together with costs and reasonable attorneys' fees.

## VI. CLASS ACTION ALLEGATIONS

70. Plaintiffs bring this action individually and on behalf of all other persons similarly situated (“Class Members”).

71. Class Definition. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action as a class action on behalf of the Class of persons defined as follows:

**Autodialer No Consent Class:** All persons in the United States who in the four years preceding this Complaint up to the date notice is disseminated to the Class: (1) Defendant (or a third person acting on behalf of Defendant) sent text messages, (2) to the person's cellular telephone number, and (3) for

1 whom Defendant claims it obtained prior express consent in the same manner  
 2 as Defendant claims it supposedly obtained prior express consent to send  
 3 automated text messages to Plaintiffs.

4 **DNC No Consent Class:** All persons in the United States who in the four  
 5 years preceding this Complaint up to the date notice is disseminated to the  
 6 Class (1) Defendant (or a third person acting on behalf of Defendant) made a  
 7 text message call on his/her cellphone, (2) more than one time within any 12-  
 8 month period, (3) where the cellphone number had been listed on the National  
 9 Do Not Call Registry for at least thirty days, (4) for the purpose of selling  
 10 Defendant's products and services, and (5) for whom Defendant claims it  
 11 obtained prior express consent in the same manner as Defendant claims it  
 12 obtained prior express consent to call the Plaintiff.

13 **Replied Stop Class:** All persons in the United States who from the last four  
 14 years to the present (1) received on their cellphone at least one text message  
 15 from Defendant (or a third person acting on behalf of Defendant) promoting a  
 16 business or service, (2) replied to the text message with an instruction for  
 17 Defendant to no longer send messages using the terms STOP, CANCEL, END  
 18 or similar terms, and (3) who thereafter received at least one additional text  
 19 message to their same cellphone number beyond a message simply confirming  
 20 the opt out, and (4) who did not reauthorize Defendant to send them text  
 21 messages after they opted out.

22       72. The following people are excluded from the Classes: (1) any Judge or  
 23 Magistrate presiding over this action and members of their families; (2) Defendant,  
 24 Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the  
 25 Defendant or its parents have a controlling interest and its current or former employees,  
 26 officers and directors; (3) persons who properly execute and file a timely request for  
 exclusion from the Classes; (4) persons whose claims in this matter have been finally  
 adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendant's  
 counsel; and (6) the legal representatives, successors, and assigns of any such excluded  
 persons. Plaintiffs anticipate the need to amend the Class Definition following class  
 discovery, including discovery revealing the manner by which Defendant claims it obtained  
 prior express consent to send text messages to the Plaintiffs.

1       73.    **Numerosity:** The exact number of members within the Classes is unknown  
 2 and not available to Plaintiffs at this time, but it is clear that individual joinder is  
 3 impracticable. On information and belief, Defendant has sent text messages to hundreds or  
 4 thousands of consumers who fall into the definition of the Classes. Members of the Classes  
 5 can be identified through Defendant's records.

6       74.    **Typicality:** Plaintiffs' claims are typical of the claims of other members of  
 7 the Classes in that Plaintiffs and the members of the Classes sustained damages arising out  
 8 of Defendant's uniform wrongful conduct. Plaintiffs are members of the Classes defined  
 9 herein, and if Plaintiffs are able to recover for the claims set forth in this Complaint then the  
 10 other Class Members will have a right to recover as well.

11       75.    **Adequate Representation:** Plaintiffs will fairly and adequately represent and  
 12 protect the interests of the Classes and have retained counsel competent and experienced in  
 13 complex class actions, including class actions under the TCPA and related statutes. Plaintiffs  
 14 have no conflicts with or interests antagonistic to those of the Classes, and Defendant has no  
 15 defenses unique to Plaintiffs.

16       76.    **Commonality and Predominance:** There are many questions of law and fact  
 17 common to the claims of Plaintiffs and the Classes, and those questions predominate over  
 18 any questions that may affect individual members of the Classes. Common questions for the  
 19 Classes include, but are not necessarily limited to the following:

- 20           (a)    Whether Defendant's conduct constitutes a violation of the TCPA;
- 21           (b)    Whether Defendant utilized an automatic telephone dialing system to  
                   send text messages to members of the Classes;
- 22           (c)    Whether members of the Classes are entitled to statutory and treble  
                   damages based on the willfulness of Defendant's conduct;

- 1 (d) Whether Defendant obtained prior express written consent to contact  
any class members;
- 2 (e) Whether Defendant sent text messages to persons who had replied  
STOP, END, CANCEL, or with similar terms;
- 3 (f) Whether Defendant sent multiple text messages to cellphone users  
whose numbers were registered on the Do Not Call list;
- 4 (g) Whether Trend Capital's messages constitute telemarketing or were  
dual purpose messages, and
- 5 (h) To the extent Defendant's conduct does not constitute telemarketing,  
whether Defendant obtained prior express oral consent to contact any  
class members.

12       **77. Superiority:** This case is also appropriate for class certification because class  
13 proceedings are superior to all other available methods for the fair and efficient adjudication  
14 of this controversy. Joinder of all parties is impracticable, and the damages suffered by the  
15 individual members of the Classes will likely be relatively small, especially given the burden  
16 and expense of individual prosecution of the complex litigation necessitated by Defendant's  
17 actions. Thus, it would be virtually impossible for the individual members of the Classes to  
18 obtain effective relief from Defendant's misconduct. Even if members of the Classes could  
19 sustain such individual litigation, it would still not be preferable to a class action, because  
20 individual litigation would increase the delay and expense to all parties due to the complex  
21 legal and factual controversies presented in this Complaint. By contrast, a class action  
22 presents far fewer management difficulties and provides the benefits of single adjudication,  
23 economy of scale, and comprehensive supervision by a single Court. Economies of time,  
24 effort and expense will be fostered and uniformity of decisions ensured.

**FIRST CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violation of 47 U.S.C. § 227)**

**(On Behalf of Plaintiffs Van Elzen and Moore and the Autodialed No Consent Class)**

78. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

79. Defendant and/or its agent(s) transmitted unsolicited text message calls to cellular telephone numbers belonging to Plaintiffs and the other members of the Autodialer No Consent Class using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*, without human intervention. The telephone dialing equipment utilized by Defendant and/or its agent(s), which is substantially similar to a predictive dialer, dialed numbers from a list, or dialed numbers from a database of telephone numbers, in an automatic and systematic manner.

80. These text calls were made *en masse* and without the prior express written or oral consent of the Plaintiffs and the other members of the Autodialled No Consent Class to receive such wireless spam.

81. To the extent written prior express consent was required, Defendant failed to obtain prior express written consent that disclosed to the consumer that agreeing to receive text messages was not a condition of purchase or use of any goods or service or that the consumer was agreeing to receive calls with the use of an ATDS or similar technology.

82. To the extent Defendant's agent(s) sent the text messages at issue, Defendant's agent acted with actual or apparent authority and/or in accordance with a contract between Defendant and its agent(s). Defendant's agents acted under Defendant's control and for Defendant's benefit and/or with Defendant's knowledge and approval. Defendant controlled its agents and knew about, and received the benefits of, the agent's text

messaging activities. Defendant ratified the agent's conduct with respect to the transmission of such text messages.

83. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiffs and the other members of the Autodialer No Consent Class are each entitled to, under section 227(b)(3)(B), a minimum of \$500.00 in damages for each violation of such act.

84. In the event that the Court determines that Defendant's conduct was willful and knowing, it may, under section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiffs and the other members of the Autodialer No Consent Class.

**SECOND CAUSE OF ACTION  
Telephone Consumer Protection Act  
(Violation of 47 U.S.C. § 227)**

**(On Behalf of Plaintiffs Van Elzen and Moore and the DNC No Consent Class)**

85. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

86. Defendant and/or its agent transmitted unsolicited text message calls to cellular telephone numbers belonging to Plaintiffs Van Elzen and Moore and the other members of the DNC No Consent Class using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*, without human intervention. The telephone dialing equipment utilized by Defendant and/or its agent, which is substantially similar to a predictive dialer, dialed numbers from a list, or dialed numbers form a database of telephone numbers, in an automatic and systematic manner.

87. These text calls were made *en masse* and without the prior express consent of the Plaintiffs Van Elzen and Moore and the other members of the DNC No Consent Class to

1 receive such wireless spam.

2 88. Plaintiffs and the Class Members had registered their telephone numbers on  
3 the Do Not Call registry for at least 30 days yet each received more than one text message  
4 advertisement within a 12-month period from or on behalf of Defendant.

5 89. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result  
6 of Defendant's conduct, Plaintiffs Van Elzen and Moore and the other members of the DNC  
7 No Consent Class are each entitled to, under section 227(b)(3)(B), a minimum of \$500.00 in  
8 damages for each violation of such act.

9 90. In the event that the Court determines that Defendant's conduct was willful  
10 and knowing, it may, under section 227(b)(3)(C), treble the amount of statutory damages  
11 recoverable by Plaintiffs Van Elzen and Moore and the other members of the DNC No  
12 Consent Class.

13 **THIRD CAUSE OF ACTION**  
14 **Telephone Consumer Protection Act**  
15 **(Violation of 47 U.S.C. § 227)**  
16 **(On Behalf of Plaintiff Moore and the Replied Stop Class)**

17 91. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
forth herein.

18 92. Defendant and/or its agent transmitted unsolicited text message calls to  
19 cellular telephone numbers belonging to Plaintiff Moore and the other members of the  
20 Replied Stop Class using equipment that, on information and belief, had the capacity to store  
21 or produce telephone numbers to be called, using a random or sequential number generator,  
22 and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*, without  
23 human intervention.

24 93. The telephone dialing equipment utilized by Defendant and/or their agent,  
25 which is substantially similar to a predictive dialer, dialed numbers from a list, or dialed  
26

1 numbers form a database of telephone numbers, in an automatic and systematic manner.

2 94. These text calls were made *en masse* and without the consent of the Plaintiff  
 3 Moore and the other members of the Replied Stop Class to receive such wireless spam.  
 4 Indeed, any prior express consent had been revoked by each class member since they each  
 5 had responded with the common SMS codes to opt-out of further communications, such as  
 6 “STOP,” “REMOVE,” “OPT OUT,” “END,” “CANCEL,” or similar terms.

7 95. The text messages to Plaintiff Moore and the Replied Stop Class were made  
 8 after any consent had been expressly revoked by responding with an opt-out request, such as  
 9 “STOP.” This alone violates the TCPA.

10 96. Based on such conduct, Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii).

11 97. As a result of such conduct, Plaintiff Moore and the other members of the  
 12 Replied Stop Class are each entitled to, under section 227(b)(3)(B), a minimum of \$500.00  
 13 in damages for each violation of such act.

14 98. Additionally, because the text messages steadily continue despite multiple  
 15 requests that they STOP, the violations are capable of repetition, even if Defendant was to  
 16 temporarily place them on hold.

17 **FOURTH CAUSE OF ACTION**  
 18 **(Violations of Washington Automatic Dialing and Announcing Device Statute,  
 19 RCW 80.36.400)**

20 98. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
 21 forth herein.

22 99. At all times material hereto, Defendant used an automatic dialing and  
 23 announcing device (“ADAD”) as defined in RCW 80.36.400(1)(a).

24 100. Defendant sent the text messages, which were commercial solicitations  
 25 made for the purpose of encouraging Plaintiffs and the Class Members to purchase  
 26 Defendants goods and services, namely its payday loans, from Washington State.

**FIFTH CAUSE OF ACTION**  
**(Violation of the Washington Consumer Protection Act, RCW 19.86)**

101. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

102. Under RCW 80.36.400(3), Defendant's violation of RCW 80.36.400 constitutes a violation of the Washington State Consumer Protection Act, RCW 19.86, *et seq.*

103. The text messages themselves, or the decision to transmit them, were made in and/or emanated from Washington State.

104. As a direct result of Defendant's conduct, Plaintiffs and Class members suffered damages in an amount to be proven at trial, and is additionally entitled to treble damages, civil penalties, and costs and attorneys' fees as provided by RCW 19.86.

**SIXTH CAUSE OF ACTION  
(Invasion of Privacy by Intrusion under Washington Law)**

105. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

106. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of invasion of privacy by intrusion into Class members' solitude, seclusion, or private affairs under Washington law.

107. As a direct result of Defendant's intrusions of privacy, Plaintiffs and members of the Class are each entitled to damages for each and every invasion of privacy by intrusion.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial.

## REQUEST FOR RELIEF

**WHEREFORE**, Plaintiffs Dave Van Elzen and Aubrey Moore, on behalf of themselves and the classes, pray for the following relief:

1. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiffs Van Elzen and Moore as the representatives of the Classes and appointing their attorneys' as Class Counsel;
2. An award of actual and statutory damages to be placed in a common fund for the benefit of the Class Members;
3. An injunction requiring Defendant to cease all wireless spam activities, and otherwise protecting the interests of the Class;
4. A declaration that Defendant used an ATDS under the TCPA and failed to honor opt out requests;
5. An award of reasonable attorneys' fees and costs from the common fund; and
6. Such further and other relief the Court deems reasonable and just.

DATED this 9th day of September, 2016.

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*Counsel for Plaintiffs and the Putative Class*

*\*pro hac vice* admission to be filed